



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2011-0785]

RIN 1625-AA08

Special Local Regulation; HITS Triathlon; Corpus Christi Bayfront, Corpus Christi, TX.

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final Rule.

SUMMARY: The Coast Guard is establishing a temporary Special Local Regulation in the Corpus Christi Bayfront area within the Corpus Christi, TX Captain of the Port Zone. This Special Local Regulation will restrict vessels from portions of the Corpus Christi Bayfront area during the HITS Triathlon on February 18th and 19th, 2012. This Special Local Regulation is necessary to ensure the safety of HITS Triathlon participants and protect them from the hazard of vessel traffic in the area.

DATES: This regulation will be effective on February 18, 2012 through February 19, 2012.. This regulation will be enforced on February 18, 2012 from 6:45 a.m. to 8:15 a.m. and 11:45 a.m. to 1:15 p.m., and on February 19, 2012 from

6:45 a.m. to 9:45 a.m.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2011-0785 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-0785 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail the United States Coast Guard Sector Corpus Christi's Waterways Management Division; telephone 361-888-3162, e-mail D08-DG-SecCorpusChristi-Prev-PMD-WWM@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative

Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. The Coast Guard received notice and application for this event on or about August 15, 2011. The Coast Guard reviewed the planned event and determined that a special local regulation is needed to protect event participants from the possible hazards associated with local boat traffic in the area, but that determination was not completed in time for a Notice of Proposed Rulemaking to be prepared and comments to be received. Delaying or foregoing this rule to publish a NPRM would unnecessarily interfere with the contractual obligations that may be involved with the event and would forego the safety measures necessary to protect the event participants. The public interest in holding this event as scheduled outweighs the chance that this temporary rule will interfere with vessel traffic in a meaningful way. This rule does provide a full 30-day period before its effective date.

Basis and Purpose

On February 18 and 19, 2012 the HITS triathlon will take place near and in the Corpus Christi Bayfront area. This temporary special local regulation is necessary to ensure the safety of HITS Triathlon participants and protect them from the possible hazards associated vessel traffic inside the waters of the Corpus Christi Bayfront area during this event.

Discussion of the Rule

This special local regulation is intended to restrict vessel traffic from a portion of the Corpus Christi Bayfront area for the swim portion of the triathlon. The size of the zone was determined by natural barriers on all 4 sides of the race course and local knowledge about wind, waves, and currents in this particular area.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential

costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard has determined that this rule is not a significant regulatory action for the following reasons:

(1) The rule will be enforced for four hours a day for two days; (2) scheduled breaks will be provided to allow waiting vessels to transit safely through the affected area; (3) persons and vessels may enter, transit through, anchor in, or remain within the regulated area if they obtain permission from the COTP or the designated representative; and (4) advance notification of amplifying information about the event and this regulation will be made to the maritime community via broadcast notice to mariners and Local Notice to Mariners (LNM).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) This rule will only be enforced not more than 4 hours each day; (2) during non-enforcement hours all vessels will be allowed to transit through the special local regulation zone without having to obtain permission; (3) vessels will be allowed to pass through the zone with permission of the Coast Guard Patrol Commander during scheduled break periods between races and at other times when permitted by the Coast Guard Patrol Commander.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the

Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the

expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use

voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34) (h), of the Instruction. This rule involves the

establishment of a Special Local Regulation in conjunction with a marine event permit. Under the terms of the instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this regulation.

List of Subjects in 33 CFR Part 100

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: Authority: 33 U.S.C. 1233.

2. Add a new temporary § 100.35T08-0785 to read as follows:

§ 100.35T08-0785 Special Local Regulations for Marine Events; HITS Triathlon; Corpus Christi Bayfront, Corpus Christi, TX.

(a) Definitions.

(1)As used in this section "*Participant Vessel*" means all vessels officially registered with event officials to race or work in the event. These vessels include race boats, rescue boats, tow boats, and picket boats

associated with the race.

(2) The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, State, and local officers designated by or assisting the Captain of the Port Corpus Christi in the enforcement of the regulated area

- (b) Location. The following area is a special local regulation: All waters of the Corpus Christi Bayfront area contained within the North Entrance to the Corpus Christi Marina. The western and eastern boundaries are the structures that physically construct the North Entrance to the Corpus Christi Marina; respectively, S. Southshore Line Blvd and the three Breakwater walls. The northern boundary is a straight line running from the entrance of the Corpus Christi Art Museum Pier Security Fence (approx 27° 48' 37.6' N/097° 32' 34.3" W) to the northern most tip of the breakwater walls (approx 27° 48' 31.1' N/097° 23' 27.2" W). The southern boundary is a straight line running from the intersection of Mann St. and S. Southshore Line Blvd (approx 27° 48' 03.5' N/097° 23' 28.1" W) to the southernmost tip of the breakwater walls (approx 27° 48' 09.5' N/097° 23' 18.1" W).

(c) Enforcement Period. This regulation will be enforced on February 18, 2012 from 6:45 a.m. to 8:15 a.m. and 11:45 a.m. to 1:15 p.m., and on February 19, 2012 from 6:45 a.m. to 9:45 a.m., or until swim the for each race is complete.

(d) Regulations.

(1) In accordance with the general regulations for marine events detailed in §100.35, 100.40, and 100.801 of this part, entry into this zone is prohibited to all vessels except participant vessels and those vessels specifically authorized by the Captain of the Port, Corpus Christi, designated Coast Guard Patrol Commander or a designated representative.

(2) Persons or vessels requiring entry into or passage through must request permission from the Captain of the Port, Corpus Christi, designated Coast Guard Patrol Commander or a designated representative. They may be contacted on VHF Channel 13 or 16, or by telephone at (361) 939-6349.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port, Corpus Christi, designated Coast Guard Patrol Commander or a designated representative.

(e) Informational Broadcasts. The Captain of the Port Corpus Christi or a designated representative will inform the public through broadcast notice to mariners when special local regulations have been established and if there are changes to the enforcement period for this special local regulation.

Dated: November 23, 2011.

J. R. Pasch
Captain, U.S. Coast Guard
Captain of the Port, Corpus Christi

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